

EXHIBIT O

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TESSERA, INC.,)
)
Plaintiff and)
Counter-Defendant,)
)
vs.) No. 4:12cv00692 cv
) 4:05cv04063 cw
ADVANCED MICRO DEVICES,)
INC., et al,)
)
)
Defendants and)
Counter-Claimants.)
)
)
)
)
AND RELATED CASES)
)
)

- - - -

VOLUME I

EXPERT WITNESS TESTIMONY OF

REINHOLD DAUSKARDT

(Pages 1 - 211)

Held at the Law Offices of Sidley Austin, LLP

1001 Page Mill Road, Palo Alto, California

Monday, March 31, 2014, 10:35 a.m.

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REPORTED BY: ELAINA BULDA-JONES, RPR, CSR #11720

1 The time is 11:26 a.m.

2 (Whereupon, a brief recess was taken.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 11:35 a.m.

5 BY MR. ANDERSON:

6 Q. Okay. So back on the record,
7 Dr. Dauskardt, and directing your attention again to
8 Exhibit 7 to the deposition. It is Dr. Schaper's
9 claim chart for the 1989 OMPAC package.

10 Do you have an opinion as to whether the
11 OMPAC package anticipates each and every element of
12 the claims that are asserted in this suit?

13 A. I agree with the opinions of Schaper.

14 Q. Okay. And just for the sake of the
15 record, is it your opinion that the 1989 OMPAC
16 package anticipates all of the asserted claims of
17 the '977 patent?

18 A. I do.

19 Q. And, again, for the record, is it your
20 opinion that the 1989 OMPAC package anticipates all
21 of the claims of the '326 patent?

22 A. Yes, it is.

23 Q. Okay. So we are done with that one.

24 Let me go now to a portion of Schaper's
25 report. We have marked this as Exhibit 8 to the

1 Dr. Dauskardt, back to Exhibit 8 of the deposition,
2 which is the report of Dr. Schaper that we looked at
3 briefly earlier.

4 And in particular let me direct your
5 attention your attention to page 14, Paragraph 42.
6 If you could read to yourself Paragraph 42 of
7 Exhibit 8, then I will ask you a question about it.

8 A. I have read it.

9 Q. I would like you, sir, to apply the --
10 Paragraph 42 to the opinions that you have reached
11 in this case.

12 Using the standards set forth in Paragraph
13 42, is it your opinion that the asserted claims of
14 the patents-in-suit are invalid for indefiniteness?

15 A. Yes.

16 Q. In your own words, sir, why is that?

17 A. They simply don't provide any definition
18 or any limitations on the required movement and how
19 to separate that movement from other movements that
20 would be inherent in the package.

21 And so, with respect to the definiteness
22 test, somebody of ordinary skill in the field simply
23 would not understand the limitations.

24 MR. ANDERSON: Okay. So I think it would
25 be convenient, if it is okay with you,

1 the Court on the case.

2 Q. Can you give me an example of some kind of
3 information that you felt, with your experience on
4 the case, you didn't need to spend a large amount of
5 time reviewing?

6 A. Well, for example, the prosecution history
7 of the patents. I did look through it. I on
8 occasion went back to consult some aspect of it.

9 But to spend a large amount of time on
10 that large amount of information, ended up, I
11 believe, not being relevant to what I was doing.

12 Q. And why is that? Why did you find the
13 prosecution history to not be particularly relevant
14 to what you were doing here?

15 A. Well, I was working with the final
16 patents, and certainly understanding the background
17 to the patent and the choice of terminology, knowing
18 something about the prosecution history would have
19 been important.

20 But to spend all of my time looking at the
21 prosecution history at the expense of time spent
22 looking at your expert reports or the defense expert
23 reports would not have been productive, I believe.

24 Q. Did you identify anything in the materials
25 that you had that, had you more time, you would have

1 liked to look at more closely?

2 A. No, I -- at the end, I felt that I had a
3 good -- or I had enough information and that there
4 was nothing that I had been provided with that, if I
5 would have had more time to consider that, that I --
6 it would have affected my opinion.

7 Q. You felt you had sufficient time to review
8 all the materials provided to render a reliable
9 opinion in this case; is that fair?

10 A. I think that's a fair way of putting it,
11 yes.

12 Q. Did you review the decision of the
13 International Trade Commission in its investigation
14 against Qualcomm and ST, among others, as part of
15 your work in this case?

16 A. As I mentioned in the earlier questions
17 that related to that, I did review the ITC opinion
18 along with other tribunals and judgments that were
19 made on the case. So I was aware of them. I am
20 aware of them. The answer is yes.

21 Q. Okay. Did you give any weight to the
22 decision of the International Trade Commission in
23 the -- the '605 investigation, the investigation
24 against Qualcomm and ST, in reaching your opinions
25 in this case?

1 A. I gave it weight inasmuch as if there were
2 information that I had obtained -- had seen or
3 obtained from reading it that would scientifically
4 have affected my opinion, then I would have given
5 that weight, yes.

6 However, just because some tribunal or
7 some other procedure had made a ruling in this case
8 would not have by itself affected my opinion.

9 Q. Was there any analysis of -- let's start
10 with validity -- by -- you understand -- let me back
11 up.

12 In the International Trade Commission
13 proceeding where ST was a party, the parties there
14 challenged the validity of the Tessera patents.

15 Do you understand that?

16 A. Yes, I do.

17 Q. Okay. Was there any part of the analysis
18 by the International Trade Commission or the Federal
19 Circuit reviewing the International Trade Commission
20 on ST and others' arguments of validity that you
21 found helpful to the work you did on this case?

22 MR. ANDERSON: Object to form.

23 THE WITNESS: I wouldn't say helpful.
24 There was a period in my discovery on this case that
25 any information was useful in terms of helping me

1 understand.

2 And certainly, in that context, the
3 information that I saw from those cases and those
4 tribunals was useful, but it didn't -- it didn't
5 affect my opinion.

6 BY MR. OLSON:

7 Q. Were there any analyses performed by the
8 International Trade Commission or the Federal
9 Circuit reviewing the International Trade Commission
10 of Tessera's showing of infringement in that
11 investigation that you found helpful in any way in
12 your work on this case?

13 A. Again, no. Nothing that I can
14 specifically refer to that I thought really was
15 useful in that sense. Let me clarify.

16 Certainly useful in terms of discovery of
17 understanding how people were thinking about the
18 interpretation of the claim language and of the
19 patents.

20 But nothing that was specifically
21 relevant, I thought, scientifically that -- or from
22 an engineering perspective that would have altered
23 my opinion, other than being informative.

24 Q. Would it be fair to say that you gave the
25 International Trade Commission and the Federal

1 Circuit that reviewed the work of the International
2 Trade Commission no weight in your work in this
3 case?

4 A. No --

5 MR. ANDERSON: Sorry. Let me get an
6 objection in, Dr. Dauskardt.

7 So I'm going to object to this continuing
8 line of questions, inasmuch as you are asking him
9 about these decisions that you have not provided to
10 him.

11 THE WITNESS: Can you ask the question
12 again?

13 BY MR. OLSON:

14 Q. Sure. Would it be fair to say that you
15 gave no weight to the opinions of the International
16 Trade Commission and the Federal Circuit reviewing
17 the International Trade Commission in the '605
18 investigation, that you gave those opinions no
19 weight in your work on this case?

20 MR. ANDERSON: Also, objection. Misstates
21 testimony.

22 THE WITNESS: I don't believe it would be
23 true to say that I gave -- I gave it no weight.

24 I think, as I said a little while ago, I
25 read it as part of my own discovery of the case, as

1 part of how other people had thought about these --
2 about the case.

3 And inasmuch as there might have been
4 information there that would have been, in my
5 opinion, relevant scientifically or from an
6 engineering point of view, then I most certainly
7 would have given that weight in my decision.

8 I am trying now to remember anything
9 specific, and right off the top of my head, I can't
10 think of anything specific, although it might have
11 been part of the claim language with respect to
12 movement related to external forces was specifically
13 agreed to in those cases.

14 But I'm not remembering exactly. But that
15 would have been an example where I would have looked
16 at that from an engineering perspective and said,
17 "That makes sense. I agree with that."

18 And so inasmuch as any of that information
19 was there, I most certainly would have given it
20 weight.

21 BY MR. OLSON:

22 Q. You mentioned earlier in your discussions
23 with ST's lawyer that some things previously decided
24 by Judge Wilken regarding these patents, you had in
25 essence deemed resolved; is that a fair way of

1 saying what you said before?

2 MR. ANDERSON: Objection. Misstates
3 testimony.

4 THE WITNESS: Well, I -- I certainly, and
5 I believe I have this in my report, have accepted
6 the interpretation by the Court, by Judge Wilken,
7 that the movement that is claimed in the patents is
8 related to the application of external force and
9 leads to the appreciable reduction of mechanical
10 stress.

11 My understanding from the experts' reports
12 and the experts' testimony is that that has been the
13 interpretation of the Court. And so I have -- I
14 have accepted that, and as I said, I agree with
15 that.

16 If I had not agreed with that
17 interpretation, I would have said so.

18 And in fact, when I first read it, I had
19 to think about it for a while to make sure that this
20 was consistent with my understanding of the patents
21 and the operation of the device and the claims.

22 So I would not, even if it were a ruling
23 by the present Court, have simply accepted it if it
24 was not scientifically and technically valid.
25

1 BY MR. OLSON:

2 Q. Are there any other rulings by the present
3 Court that you reviewed and disagreed with?

4 A. No.

5 Q. Have you reviewed Judge Wilken's rulings
6 regarding, for instance, anticipation by the OMPAC
7 package?

8 A. No.

9 Q. Okay. Well, she has reviewed arguments of
10 anticipation by the OMPAC package of -- and issued a
11 ruling.

12 And just to help me understand what you --
13 you agree with and what you disagree with, I would
14 like to walk through that, if we could, so I could
15 understand the basis for your disagreement and
16 reaching a different conclusion than Judge Wilken.

17 So let me hand you what I have marked as
18 Exhibit 19.

19 (Whereupon, Exhibit 19 was marked for
20 identification.)

21 BY MR. OLSON:

22 Q. That's are excerpts from a opinion by
23 Judge Wilken on the anticipation by OMPAC, and
24 understand from a scientific basis where there is
25 agreement and where there is disagreement.

1 the Court did make it and it's written.

2 Q. Okay.

3 A. I would agree with that.

4 Q. So do you agree that the Court made the
5 statement?

6 A. I did.

7 Q. Well, my second question is, do you agree
8 with the substance of the statement, that
9 "incidental movement within the OMPAC package was
10 not intended to and does not appreciably relieve
11 mechanical stress"?

12 A. I would agree with the statement that
13 incidental movement was not designed to relieve
14 mechanical stress.

15 But in those OMPAC packages, I don't have
16 specific information on whether there was any stress
17 relief or not associated with these incidental
18 movements.

19 Q. You understand, sir, in this case that the
20 defendants bear the burden of proof to show that the
21 patent is invalid; do you understand that?

22 A. I do.

23 Q. And in this case have the defendants given
24 any testing information whatsoever about the OMPAC
25 package?

1 But I think if you look at my section that
2 I wrote on anticipation, then I did not state that
3 opinion in that way in this section.

4 BY MR. OLSON:

5 Q. I'm just trying to --

6 A. In other words, what I was trying to do in
7 the section on anticipation was to find existing
8 art, prior art, that would anticipate the Tessera
9 patents or would have anticipated the Tessera
10 patents.

11 That did not, in that section, include the
12 OMPAC package. However, as I note subsequently, if
13 one broadly construes the claim limitations in the
14 Tessera patents, then they would be anticipated by
15 the OMPAC package.

16 So in that sense, I would agree that they
17 anticipate the Tessera patents, because the Tessera
18 patents don't have sufficient claim limitations by
19 which movement and stress relief in the OMPAC
20 package could be distinguished from what might
21 happen in the Tessera patents.

22 Q. Is it your opinion that the 1989 OMPAC
23 package anticipates all of the asserted claims of
24 the '977 patent?

25 A. In the way the '977 patent is written,

1 without sufficient claim limitations, then I would
2 agree with that, yes.

3 Q. And, therefore, it's your view that the
4 OMPAC package appreciably relieves mechanical
5 stresses, correct?

6 A. Since the word "appreciable" is not
7 defined in the Tessera patents, it could be any
8 stress relief.

9 There is no definition of the word
10 "appreciable." It could be a millionth of a percent
11 or it could be a hundred percent. There is no way
12 to make that determination.

13 And in fact, as you can see in all of the
14 expert testimony here, it's been almost impossible
15 for those stresses to be properly defined and
16 calculated.

17 So I know this is a difficult and a subtle
18 point, but the fact is, since the claims in '977 and
19 the other patents, the other Tessera patents provide
20 no claim limitations, then any stress relief could
21 be appreciable.

22 There is no definition of the word
23 "appreciable." Nobody would be able to interpret
24 that.

25 Q. And under that interpretation of the

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1 A. Well, as I have described in my report,
2 any package would exhibit such motion.

3 And the description in many of these
4 reports, if not all of these reports, of a
5 multilayered package structure containing different
6 materials with different thermal expansion
7 properties would necessarily imply that these
8 motions would be present.

9 Q. Okay. How much motion would be present in
10 the OMPAC package?

11 A. The exact extent of the motion would have
12 to be calculated. It's something that is knowable.
13 It's potentially measurable. But I can't tell you
14 now exactly how much it is.

15 Q. And nobody in this case has calculated
16 the --

17 MR. ANDERSON: Objection. Vague.
18 Overbroad.

19 MR. DANE: Will you please not interrupt
20 the question in the middle of the question?

21 BY MR. OLSON:

22 Q. Nobody in this case has calculated how
23 much movement is in the OMPAC package, so --

24 MR. ANDERSON: Just as a matter of
25 protocol, Dr. Dauskardt, if I could ask you, please,

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1 the 1989 OMPAC package?

2 MR. ANDERSON: Objection. Argumentative.
3 Vague and overbroad. Asked and answered.

4 THE WITNESS: I -- thinking through all of
5 the materials that I have looked at, I don't recall
6 seeing that. That doesn't mean it doesn't exist,
7 but I don't recall seeing it.

8 Can you give me an example of this
9 package, who -- a designation number?

10 BY MR. OLSON:

11 Q. It's referred to at length in
12 Dr. Schaper's report, sir.

13 A. Uh-huh. Yes, I have read Dr. Schaper's
14 report.

15 Q. Okay. Has anyone in this case
16 calculated -- well, let me back it up, ask a
17 different question.

18 You also claim the Mullen reference
19 anticipates these patents, Tessera's patents,
20 correct?

21 A. The Mullen patents anticipate the
22 patents-in-suit, yes.

23 Q. Okay. Has anyone -- do you know how much
24 movement, if any, exists in the Mullen patent?

25 A. Inasmuch as we don't know how much motion

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1 exists for any of the packages that might be built
2 based on the current patents-in-suit, then we also
3 do not know currently how much motion exists in
4 those packages.

5 Q. Okay. In the Mullen patent?

6 A. In the Mullen patent.

7 Q. And nobody in this case has done any
8 calculation of how much movement is in the Mullen
9 package, correct?

10 MR. ANDERSON: Objection. Vague,
11 overbroad.

12 THE WITNESS: That's -- that's my
13 understanding.

14 BY MR. OLSON:

15 Q. Do you know how much motion exists in the
16 Lin patent -- I mean, excuse me, do you know how
17 much movement exists in the Lin patent?

18 A. I currently do not. If that information
19 has been published or if it is in the materials that
20 have been provided to me, then I am not recalling it
21 at the moment.

22 Q. Okay. And you understand, sir, when I use
23 the word "movement," I'm referring to movement as we
24 have been discussing today as it is defined in the
25 claim construction?

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1 A. The claimed movement --

2 Q. Yes.

3 A. -- and not all of the other movements.

4 Q. Correct.

5 A. I understand.

6 MR. ANDERSON: Objection. Vague.

7 BY MR. OLSON:

8 Q. Has anyone in this case calculated how
9 much claimed movement is in the Lin patent?

10 A. Again, as I sit here thinking about the
11 materials that I have reviewed, I do not -- I
12 cannot -- cannot remember any number.

13 Q. Do you know how much claimed movement
14 exists in the Freyman patent?

15 MR. ANDERSON: So --

16 THE WITNESS: My answer is the same.

17 BY MR. OLSON:

18 Q. You don't know?

19 MR. ANDERSON: Sorry. Sorry. Objection.
20 Objection. I'm going to object to the continuing
21 use of this phrase "claimed movement" without some
22 definition on the record of what claim counsel is
23 referring to.

24 BY MR. OLSON:

25 Q. Do you have my question in mind, sir?

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1 A. Can you repeat the question?

2 Q. Do you know how much claimed movement
3 exists in the Freyman patent?

4 MR. ANDERSON: Same objection.

5 THE WITNESS: And the same answer that I
6 have given you for the others.

7 BY MR. OLSON:

8 Q. You don't know?

9 A. I don't recall seeing any of that motion
10 calculated. It would exist, but I can't tell you
11 here from memory whether it was calculated or
12 measured.

13 Q. Okay. Okay. And you don't know whether
14 anyone in this case has done any measurements of the
15 movement, the claimed movement in the Freyman
16 package, correct?

17 A. Correct.

18 Q. Do you know how much claimed movement
19 exists in the Okinaga package?

20 A. I do not.

21 MR. ANDERSON: Same objection.

22 BY MR. OLSON:

23 Q. Has anyone in this case measured how much
24 claimed movement exists in the Okinaga package?

25 A. Not to my knowledge.

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1 MR. ANDERSON: Objection.

2 Okay. Hold on.

3 BY MR. OLSON:

4 Q. Do you know how much movement exists in
5 the Hatada package?

6 MR. ANDERSON: Hold on. I need to have an
7 opportunity to state my objection.

8 THE VIDEOGRAPHER: Microphone.

9 MR. ANDERSON: Oh. Usually it falls off
10 if you get up. Okay. Oh, I can see. All right.

11 Pardon me, Counsel.

12 Objection. The question is vague and
13 overbroad and, again, object to the lack of a
14 definition for the phrase "claimed movement."

15 BY MR. OLSON:

16 Q. So do you have any doubt in your mind what
17 I mean when I am asking about the claimed movement?

18 A. Perhaps if you can state it for the
19 record --

20 Q. I think, well, as we have been
21 discussing --

22 A. -- then we'll all be much happier.

23 Q. -- it's the claimed movement as described
24 in the patent claims at issue in this case?

25 MR. ANDERSON: Same objection.

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1 THE WITNESS: I understand that.

2 BY MR. OLSON:

3 Q. Okay. And do you know how much claimed
4 movement exists in the Hatada package?

5 MR. ANDERSON: Same objection.

6 THE WITNESS: The same answer that I have
7 given you for the last number of questions.

8 BY MR. OLSON:

9 Q. And to make sure the record is clear, you
10 don't know how much claimed movement is in Hatada?

11 A. I don't recall whether anybody has
12 reported that here.

13 MR. ANDERSON: Again, Dr. Dauskardt, so we
14 can create a clean record, the protocol should be
15 counsel states his question. If I have an
16 objection, I need an opportunity to object.

17 THE WITNESS: Okay.

18 MR. ANDERSON: And that will just make
19 sure that what we're doing here is accurately
20 recorded.

21 My objection to that question is it
22 misstates prior testimony.

23 BY MR. OLSON:

24 Q. You don't know how much claimed movement
25 is in the Hatada package and you don't know whether

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1 anyone has measured the amount of claimed movement
2 in the Hatada package, correct?

3 MR. ANDERSON: Objection. Vague.
4 Overbroad.

5 THE WITNESS: I do know that there would
6 be claimed movement in the Hatada package. I don't
7 know from information that I have how much that
8 movement is.

9 BY MR. OLSON:

10 Q. Okay. Do you know the amount of stress
11 relief that exists in the OMPAC package as a result
12 of the claimed movement?

13 MR. ANDERSON: Objection. Vague.

14 THE WITNESS: Are you asking for a
15 specific number or a percentage --

16 BY MR. OLSON:

17 Q. I'm asking --

18 A. -- or just whether there would?

19 Q. -- what you know.

20 A. There would be some stress relaxation.

21 Q. How much?

22 A. I don't know the amount.

23 Q. Has anyone in this case calculated the
24 amount of stress relief that exists in the OMPAC
25 package as a result of the claimed movement?

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1 MR. ANDERSON: Objection. Overbroad.

2 Asked and answered.

3 THE WITNESS: If the OMPAC package is
4 distinct from the accused package, then I don't know
5 if that has been calculated. It has been estimated
6 for the accused packages.

7 BY MR. OLSON:

8 Q. You are referring to Dr. Fan's analysis in
9 this case?

10 A. I'm referring to -- I believe either
11 Dr. Dasgupta or Dr. Lall's estimation based on
12 Dr. Fan's calculations, correct.

13 Q. I'm referring to the 1989 OMPAC package,
14 which is not an accused package in this case. Has
15 anyone measured or quantified the amount of stress
16 relief that exists in the 1989 OMPAC package as a
17 result of the claimed movement?

18 A. Not to my knowledge.

19 MR. ANDERSON: Hold on.

20 THE WITNESS: Sorry.

21 BY MR. OLSON:

22 Q. Is the --

23 MR. ANDERSON: Hold on. Hold on.

24 Objection. The question has been asked
25 and answered. It is also argumentative. And it's

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1 vague.

2 BY MR. OLSON:

3 Q. Has anyone -- well, let me ask the
4 question a different way.

5 Do you know the amount of stress relief
6 that exists in the -- in any of the Lin, Hatada,
7 Okinaga, or Freyman references as a result of the
8 claimed movement?

9 MR. ANDERSON: Objection to the form.

10 THE WITNESS: I do know that there would
11 be some relaxation of stress, but I don't know how
12 much it would be.

13 BY MR. OLSON:

14 Q. Has anyone in this case measured the
15 amount of stress relief that exists in the Lin,
16 Hatada, Okinaga, or Freyman reference as a result of
17 the claimed movement?

18 MR. ANDERSON: Objection to --

19 THE WITNESS: Not to my knowledge.

20 MR. ANDERSON: Objection to the form.

21 THE VIDEOGRAPHER: Dr. Dauskardt, could
22 you raise your mic, please?

23 THE WITNESS: Sure.

24 THE VIDEOGRAPHER: Up to -- up to that top
25 button there.

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1 (Whereupon, a brief discussion off the
2 record.)

3 BY MR. OLSON:

4 Q. Dr. Dauskardt, do you know the amount of
5 stress relief that exists in the Mullen reference as
6 a result of the claimed movement?

7 MR. ANDERSON: Object to the form. Asked
8 and answered.

9 THE WITNESS: I do not.

10 BY MR. OLSON:

11 Q. Has anyone in this case measured how much
12 stress relief exists in the Mullen package due to
13 the claimed movement?

14 MR. ANDERSON: Object to the form. Asked
15 and answered.

16 THE WITNESS: Can you tell me what the
17 Mullen package is?

18 BY MR. OLSON:

19 Q. I believe you discussed it with
20 Mr. Anderson yesterday.

21 A. There is a Mullen patent.

22 Q. Covering a package, correct?

23 A. Correct.

24 Q. Okay. So I'm referring to the package
25 described in the Mullen patent.

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1 A. Okay.

2 Q. Does that change your answers in any way
3 about Mullen?

4 A. Well, it just clarifies for me what you
5 mean by "the Mullen package," because I only know of
6 a Mullen patent.

7 Q. Okay.

8 A. I do not believe that I have seen that
9 information.

10 Q. And to make sure the record is clear, the
11 information you are referring to is any measurement
12 of the stress relief that exists in the Mullen
13 package as a result of the claimed movement?

14 A. Correct.

15 Q. Okay. Dr. Dauskardt, I would like now to
16 turn to a little bit more of the background work
17 that you have done in this case.

18 And you mentioned yesterday that you had
19 reached an opinion before you received the summary
20 reports put together by the parties.

21 Do you remember that statement yesterday?

22 A. I do, yes.

23 Q. And I would like to know a little bit
24 about when you reached your opinion that or when you
25 first concluded that the patents were invalid.

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1 And in my mind, I found it very useful in
2 understanding the legal framework for the case.

3 BY MR. OLSON:

4 Q. What legal standard did you have the
5 hardest time understanding?

6 MR. ANDERSON: Objection. Vague.

7 THE WITNESS: I'm not sure that there was
8 any one that I decided was more difficult than any
9 other.

10 BY MR. OLSON:

11 Q. Do you feel that you understand all of the
12 legal standards -- let me back up.

13 Is your analysis in this case based on
14 your view that you have understood and applied the
15 legal standards correctly?

16 MR. ANDERSON: Object to the form.

17 THE WITNESS: Yes, it is.

18 BY MR. OLSON:

19 Q. One of the terms that you are critical of
20 in the patents or in their construction is the
21 notion of appreciable stress relief. You said that
22 is indefinite, correct?

23 MR. ANDERSON: Objection to the prologue.
24 Argumentative.

25 THE WITNESS: Correct.

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1 BY MR. OLSON:

2 Q. In your view, does the term "appreciable"
3 provide some limitation on the amount of stress
4 relief?

5 A. No.

6 Q. So appreciable stress relief, in your
7 view, is synonymous, the same as, stress relief?

8 MR. ANDERSON: Objection. Misstates
9 testimony.

10 THE WITNESS: That's correct.

11 If you are an engineer in any field and
12 are told to design something with appreciable
13 reduction of some property, then without further
14 limitation, you would have absolutely no idea of how
15 much that amount should be.

16 BY MR. OLSON:

17 Q. Your concerns would be the same if
18 Tessera's patents just required stress relief,
19 correct?

20 MR. ANDERSON: Objection. Vague.

21 THE WITNESS: I'm not sure I understand.

22 BY MR. OLSON:

23 Q. Well, the term "movable" has been
24 construed to require, among other things,
25 appreciable stress relief, correct?

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1 BY MR. OLSON:

2 Q. Does it give you any pause that you have
3 found prior art that you claim anticipates Tessera's
4 patents that no one else has asserted in any of the
5 many cases about these patents?

6 MR. ANDERSON: Objection. Lacks
7 foundation. Argumentative. Object to the form.

8 THE WITNESS: Counselor, to give you an
9 example, I was recently reading about a theory in
10 decision-making that was formed by Bernuli 300 years
11 ago.

12 And for 300 years, this theory was not
13 challenged, up until ten years ago, it was accepted
14 as an established theory in decision-making. It had
15 not been challenged for 300 years.

16 The fact that nobody else formed this
17 opinion on anticipation did not overly concern me.

18 I think my opinion here is that a lot of
19 the experts were focused on very specific aspects of
20 anticipation, and I thought that as the Court's
21 expert, I could and should take the broadest
22 possible view in the interpretation of anticipation.

23 And that's what I did. And so I'm not
24 concerned that nobody else raised this issue.

25

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1 A. This is the only example I used.

2 Q. Okay. But what you are saying is, if you
3 modify the example you show in your report, you
4 could modify it such that it would anticipate the
5 patents?

6 MR. ANDERSON: Object to the form.

7 THE WITNESS: Again, this was one of many
8 possible examples that I could use. Maybe this
9 example would have anticipated the other patent.
10 I'm forgetting the number, the first patent, '977, I
11 believe.

12 BY MR. OLSON:

13 Q. Can you point to any dual in-line package
14 that has leads underneath the die?

15 A. Not as I sit here now.

16 MR. ANDERSON: Object to the form.

17 THE WITNESS: No.

18 BY MR. OLSON:

19 Q. Can you point to any evidence by anyone in
20 the case that such a package exists?

21 MR. ANDERSON: Objection. Vague.
22 Overbroad.

23 THE WITNESS: As you questioned earlier
24 on, nobody else has formed this particular set of
25 comments and discussion on anticipation.

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1 carrier, there could be terminals underneath the
2 chip in the leadless chip carrier.

3 Q. Do you identify any leadless chip carriers
4 that actually have terminals underneath the chip?

5 A. No, I do not.

6 Q. Okay. And to be clear, if you turn to
7 page 77 of Dr. Schaper's report, you see Claim 17 of
8 the '977 patent?

9 A. Sorry, I'm sorry, the page number again?

10 Q. 77.

11 A. 77.

12 Q. And you see that Element B says, "A
13 plurality of terminals, at least some of said
14 terminals overlying one said surface of said chip."

15 Do you see that?

16 A. I do.

17 Q. So you agree that terminals overlying the
18 chip is an element common to both the '977 and '326
19 patents?

20 MR. ANDERSON: Object to the form. Calls
21 for a legal conclusion.

22 THE WITNESS: Yes, I do.

23 BY MR. OLSON:

24 Q. Okay. Sir, now I want to talk to you
25 about your obviousness opinion. If we turn to page

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1 Q. Now, I want to talk to you about your
2 written -- written description portion of your
3 report. And, first, turn to page 41.

4 And in the second full paragraph you refer
5 to the claim limitations in the '977 patent and the
6 '326 patent and quote from the claims, correct?

7 A. Yes, correct.

8 Q. Your analysis of these claims forms the
9 basis of your opinion that the patents are not valid
10 for failure to meet the written description
11 requirements, correct?

12 MR. ANDERSON: Object to the form.

13 THE WITNESS: That's -- this is certainly
14 part of my concern about the ability of somebody to
15 practice the invention with this written
16 description.

17 BY MR. OLSON:

18 Q. Did you look at the additional information
19 provided in the patent outside of the claims in
20 forming your written description opinion?

21 A. Yes, I did.

22 Q. But you don't cite any of that in your
23 discussion?

24 A. No, I don't. I -- I cited language in the
25 claim limitations themselves, as those typically

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1 have the most precise language with respect to what
2 is claimed.

3 I didn't use other examples in the patent,
4 but I certainly had, of course, read them and taken
5 them into account.

6 Q. On page 38, you state in the second to the
7 last paragraph, "A person of ordinary skill in the
8 field could not determine the extent of movement
9 related to external forces that would be required to
10 make and use the invention as claimed."

11 Do you see that?

12 A. Yes.

13 Q. "And in order to do that, they would need
14 to engage" -- "In order to determine the extent of
15 movement related to external forces, they would need
16 to engage in excessive experimentation," correct?

17 A. That's correct, to fully use the
18 invention.

19 Q. What kind of experimentation would be
20 required?

21 A. Well, I did not do a full analysis of all
22 the experimental analysis that would be needed.

23 But presumably they would have to
24 determine the kind of motion that was claimed in the
25 patent and figure out experimental techniques in

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1 MR. ANDERSON: I object to that statement
2 of the law.

3 THE WITNESS: Well, that is my
4 understanding of what she has decided. As I have
5 said here on page 38, my understanding that the
6 Court has previously interpreted "movement" and
7 "movable" as what you have just said.

8 So that's my understanding.

9 BY MR. OLSON:

10 Q. Okay. Do you disagree with Judge Wilken's
11 conclusion that one skilled in the art would
12 interpret "movable" as displacements resulting from
13 external loads that appreciably relieve stresses?

14 MR. ANDERSON: Object to the form.

15 THE WITNESS: No, I don't disagree with
16 that.

17 BY MR. OLSON:

18 Q. But you believe that in order to overcome
19 the written description defense, Tessera is required
20 to distinguish the claimed movement from all other
21 movements in the package?

22 A. Well, again, as I have described in my
23 opinion and in my report, there is lots of movement
24 in a microelectronic package and in a
25 microelectronic package assembly.

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1 invention.

2 The way it's described, again, I think, as
3 I have said clearly in my section on written
4 description and also then referred to in my section
5 on infringement, literally every microelectronic
6 package would practice this invention.

7 There is no written -- there is no
8 limitation here. Every device that's made would
9 contain some of this movement and would contain
10 stresses that were changed from some other
11 condition, some referenced condition.

12 And so every package ever made really
13 would fall under the -- the description of this
14 particular patent. It's -- there is no limitation.
15 That was my opinion.

16 BY MR. OLSON:

17 Q. One way to improve the written description
18 would have been to have some limitation on the
19 required stress reduction, correct?

20 A. One possibility would have been to have
21 some limitation on the required stress reduction.
22 Another could have been related to how much motion
23 was required.

24 Q. And the limitation could have been
25 presented as a percentage of stress reduction, for

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1 A. That's correct.

2 Q. So someone of skill in the art reading the
3 specification when the patent was filed would
4 already know how to make a DIP or LCC that you say
5 practices the invention, correct?

6 A. When you say, "skilled in the art," I
7 mean, I think I am really thinking about somebody of
8 ordinary skill.

9 Q. That's what I meant.

10 A. Skilled in microelectronic.

11 Q. So let me ask you using it, to be clear.

12 A. Right.

13 Q. Someone of ordinary skill in the art
14 reading the specification when the patent was filed
15 would already know how to make a dual in-line
16 package, a DIP, or LCC, a leadless chip carrier that
17 you said -- that you say practices the invention,
18 correct?

19 A. That's right. They would have been able
20 to anticipate from that prior art what is disclosed
21 in the -- in the -- in the present patents.

22 Q. You discuss CTE matching in your report
23 several places.

24 A. Yes, I do.

25 Q. What do you mean -- well, let me ask it

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1 BY MR. OLSON:

2 Q. Same with die-attach?

3 A. Same with die-attach.

4 Q. In the accused packages, does the package
5 substrate include solder mask and die-attach?

6 A. Yes, it does.

7 Q. Is that the interpretation used by the ITC
8 in their opinion in the '605 case, that the package
9 substrate included the die-attach and solder mask
10 layers?

11 A. I -- Counsel, I simply don't remember. I
12 would have to -- you would have to refer me to the
13 sections of these reports where that is included.

14 Q. Let me hand you what has been marked as
15 Exhibit 31.

16 (Whereupon, Exhibit 31 was marked for
17 identification.)

18 BY MR. OLSON:

19 Q. Do you recognize Exhibit 31 as the
20 decision of the International Trade Commission in
21 the '605 case?

22 A. I'm not sure I recognize this.

23 Q. Have you ever read the decision of the
24 International Trade Commission listed as -- marked
25 as Exhibit 31?

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1 A. I have seen reference to it in several of
2 the expert reports, and you might have also
3 mentioned it in your summary report to me, but I
4 have not read in detail this publication.

5 Q. Have you read it at all?

6 A. If it is in the materials that were
7 supplied to me, I'm sure at some stage I would have
8 looked at it.

9 It might have been early on in my
10 discovery, which would have been over a year ago,
11 and I do not remember the details of -- of whether I
12 read it in -- or read portions of it.

13 Q. If you turn to page 32 of the commission's
14 decision, do you see at the bottom there is a quote
15 from the initial determination, and then it says,
16 "In numerous places in the initial -- the ID initial
17 determination, the ALJ clearly states that CTE
18 matching is between the package substrate and the
19 printed circuit board"?

20 Do you see that?

21 A. Yes, I see that sentence.

22 Q. And then they continue to say, "The ALJ is
23 completely consistent in defining 'CTE matching' as
24 matching the CTE of the package substrate as opposed
25 to the package overall to the CTE of the PCB."

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1 field.

2 Q. But you are not saying -- excuse me. Let
3 me back up.

4 But you are not saying that LCCs have wire
5 bonds, are you, if they have pins, like you
6 describe?

7 A. No, they might not have wire bonds. I
8 don't know that all leadless chip carriers might not
9 have wire bonds.

10 But I'm talking here about the basic
11 engineering principle and whether, by knowing about
12 these leadless chip carriers and knowing they are
13 been designed with flexible elements and with
14 compliant layers in order to address problems of
15 fatigue damage of solder connections, then they
16 would be the same kind of strategy that might be
17 adopted and that would anticipate the claims of
18 the -- of the present patents.

19 Q. Can you identify, sitting here today, any
20 LCC that does have wire bonds?

21 MR. ANDERSON: Objection. Overbroad.
22 Vague.

23 THE WITNESS: No, no, I can't. And as I
24 said, I don't think that's pertinent, though.

25

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1 BY MR. OLSON:

2 Q. Now, I want to talk to you a little bit
3 about your invalidity opinions, just to make sure I
4 understand it.

5 Is it fair to say that, in your opinion,
6 the patent claims are invalid because they do not
7 define or specify the amount of stress relief that
8 results from the terminal to chip displacement made
9 possible by the compliant layer?

10 MR. ANDERSON: Object to the form.

11 THE WITNESS: I'm sorry, you'll, please,
12 ask that question again.

13 BY MR. OLSON:

14 Q. Is it fair to say that, in your opinion,
15 the patent claims are invalid because they do not
16 define or specify the amount of stress relief that
17 results from the terminal to chip displacement made
18 possible by the compliant layer?

19 A. Yes, that's correct. And that refers to
20 my opinion on validity, yes.

21 Q. In your view, every semiconductor package
22 containing compliant materials would show some --
23 let me ask the question without misspeaking.

24 In your view, every semiconductor package
25 containing compliant materials would show some

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1 A. That's my understanding.

2 Q. Do you understand that it came from a
3 judicial tribunal?

4 MR. ANDERSON: Objection. Asked and
5 answered.

6 THE WITNESS: Well, if that's what you are
7 telling me, then...

8 BY MR. OLSON:

9 Q. Okay. How did you decide which
10 limitations or disclaimers outside of the patent to
11 adopt in this case and which ones to question?

12 A. Well, I questioned everything, including
13 the interpretation by Judge Wilken. In fact, I
14 remember vividly the day that I read that
15 interpretation, and I thought, What would happen if
16 I disagreed with the judge.

17 And though thinking through it, after
18 initially reading it, I realized that that was an
19 appropriate limitation on the movement, the required
20 movement, and it was consistent with my
21 understanding of the patents.

22 And it was also consistent with what I
23 understood all of the experts in the case to agree
24 to.

25 Q. Your -- to make sure the record is clear,

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1 what you are talking about is the limitation due to
2 external forces, requiring it to be due to external
3 forces?

4 A. It's what I understand to be the claimed
5 movement.

6 Q. Okay. To make sure there is no confusion,
7 what do you understand to be the claimed movement?

8 A. The claimed movement, as I have written
9 several times in my written opinion, is the movement
10 related to the external force that results in
11 appreciable reduction of stress.

12 Q. This movement is the movement that you say
13 is appropriate, even though it has no metes or
14 bounds on its description?

15 MR. ANDERSON: Object to the form.

16 THE WITNESS: The claim limitations place
17 no bounds on this movement, that's correct.

18 BY MR. OLSON:

19 Q. Even though you view it's appropriate,
20 Judge Wilken's construction is appropriate, you view
21 that this leads to the patent being indefinite?

22 MR. ANDERSON: Objection to the form.

23 THE WITNESS: That would be correct.

24 BY MR. OLSON:

25 Q. So how is it appropriate, then?

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1 MR. ANDERSON: Object to the form.

2 THE WITNESS: How is what appropriate?

3 BY MR. OLSON:

4 Q. You just said that Judge Wilken's
5 definition of claimed movement was one that you view
6 as appropriate, yet it has no metes and bounds and
7 leads to the patent being found indefinite.

8 And my question is, how, with that
9 outcome, is Judge Wilken's definition of claimed
10 movement appropriate?

11 A. Well, I --

12 MR. ANDERSON: Counsel, object to the
13 form. Argumentative. Calls for a legal conclusion.

14 THE WITNESS: It was not my opinion in
15 reviewing all of these materials and in reviewing
16 the interpretation by the Court of the claimed
17 motion or movement that that would necessarily
18 validate the claims.

19 Some movement has to be defined, otherwise
20 we could allow any possible movement.

21 And so in the context of what had been
22 agreed to between the plaintiffs and the defendants,
23 what had been described by Judge Wilken, I found
24 that to be an appropriate definition.

25 It was something that, if the invention

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1 were valid, would have constituted any invention.

2 There had to be something. It couldn't be

3 everything.

4 And so that claimed movement is something

5 that I think was appropriately agreed to by both

6 sides, and from what I see, it was affirmed by the

7 judge. And so I think that is what I have accepted,

8 and which I think is correct.

9 And I don't think that, because the patent

10 is without limit, necessarily means that this

11 definition or this understanding of the claimed

12 movement is wrong.

13 BY MR. OLSON:

14 Q. You discussed this claimed movement just

15 now with ST's lawyer.

16 And I believe he characterized it as broad

17 and you agreed with that, correct?

18 MR. ANDERSON: Objection.

19 Mischaracterizes the question and answer.

20 THE WITNESS: No, I am not sure where I

21 would have said it's broad. I have certainly

22 considered many aspects of the -- the claim

23 limitations to be broad, but I'm not sure what you

24 mean specifically.

25

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1 Q. If the patent is found to be valid, it's
2 your view that under that definition proposed by ST,
3 that any package would infringe the patent, correct?

4 A. Yes, that's correct.

5 MR. ANDERSON: Object. Object to the
6 form.

7 THE WITNESS: That would necessarily be
8 the case.

9 (Reporter clarification.)

10 BY MR. OLSON:

11 Q. Is the basis for your infringement opinion
12 that if the packages do infringe the patent, then
13 they are just practicing the prior art?

14 A. That's right.

15 Q. I want you to turn to the International
16 Trade Commission's decision. I think it's
17 Exhibit 21. And if you could turn to pages 17 and
18 18 -- actually, the bottom of 17, and the second
19 sentence in that bottom paragraph of page 17.

20 A. Exhibit 21.

21 Q. Oh, I'm sorry. I must have my notes
22 wrong. The International Trade Commission decision.

23 MR. DETRE: Exhibit 31.

24 BY MR. OLSON:

25 Q. 31, excuse me.